

<b>TO:</b> <b>Mail Stop 8</b> <b>Director of the U.S. Patent and Trademark Office</b> <b>P.O. Box 1450</b> <b>Alexandria, VA 22313-1450</b>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Southern District of Ohio on the following Patents or ☒ Trademarks:

DOCKET NO. 2:11-cv-00369	DATE FILED April 29, 2011	U.S. DISTRICT COURT Southern District of Ohio, Eastern Division
PLAINTIFF  Aqua Immersion, LLC		DEFENDANT  Columbus Scuba, Inc., et al.
PATENT OR	DATE OF PATENT	HOLDER OF PATENT OR TRADEMARK
1 3,739,941		See Complaint Attached
2 3,816,711		
3		
4		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1			
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
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CLERK	(BY) DEPUTY CLERK	DATE
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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

FILED  
JAMES BONINI  
CLERK

2011 APR 29 PM 3:13

U.S. DISTRICT COURT  
SOUTHERN DIST. OHIO  
EAST. DIV. COLUMBUS

AQUA IMMERSION, LLC  
929 Jasonway Avenue  
Columbus, Ohio 43214,

Plaintiff,

vs.

COLUMBUS SCUBA, INC.  
c/o Andy Silverman  
4933 Muleady Court  
Columbus, Ohio 43221,

and

MELISSA BERRY  
4933 Muleady Ct.,  
Columbus, Ohio 43221,

Defendants.

Case No. **2:11 cv 369**

Judge JUDGE CRANAM

Magistrate Judge \_\_\_\_\_

MAGISTRATE JUDGE ABEL

**COMPLAINT**

For its Complaint against Defendants Columbus Scuba, Inc. and Melissa Berry, Plaintiff Aqua Immersion, LLC states as follows:

**JURISDICTION, VENUE, AND PARTIES**

1. Plaintiff Aqua Immersion, LLC (hereafter "Plaintiff") brings this action for cybersquatting under the Anti-Cybersquatting Consumer Protection Act (the "ACPA") pursuant to the Lanham Act, 15 U.S.C. § 1114; the Ohio deceptive trade practices act ("DTPA") pursuant to 41 R.C. § 4165, trademark infringement pursuant to the Lanham Act, 15 U.S.C. Sec. 1125(1)(A), and unfair competition and under the common laws of the state of Ohio and the United States.

2. Pursuant to 28 U.S.C. §§ 1331, 1338(a), and 1338(b), this Court secures jurisdiction since the claims asserted in this Complaint arose in this judicial district, and since all parties regularly reside and/or do business in this judicial district. Pursuant to 28 U.S.C. §§ 1391(c) and 1400(a), venue in this judicial district is proper since a substantial part of the acts and omissions giving rise to the claims asserted in this Complaint occurred in this judicial district.
3. Since, May 19, 2006, Plaintiff has functioned as an Ohio Limited Liability Company and existing under laws of the State of Ohio with its principal place of business in Columbus, Franklin County, Ohio.
4. Since August 3, 2007, Defendant, Columbus Scuba, Inc. is a corporation organized and existing under the laws of the State of Ohio with its principal place of business at 4933 Muleady Court, Franklin County, Columbus, Ohio 43221.
5. Upon information and belief Columbus Scuba, Inc. opened a new store on April 28, 2011 at 4680 Indianola Avenue, Columbus, Ohio.
6. Upon information and belief, Melissa Berry lives in Lewis Center, Ohio, and did so during the relevant times herein.

#### **FACTUAL BACKGROUND TO ALL CLAIMS**

7. Plaintiff incorporates by reference paragraphs 1 through 6 of this Complaint as if completely rewritten herein.
8. Plaintiff owns a standard character trademark for the mark “Aqua Immersion.” Such Mark is registered at United States Patent and Trademark Office, registration number 3739941.

9. Plaintiff owns a stylized trademark for the mark “Aqua Immersion Dive ‘n Travel Center.” Such Mark is registered at United States Patent and Trademark Office, registration number 3739941. The image below shows the stylized mark as registered:



10. Plaintiff is the registrant of the URL domain [www.aquaimmersion.com](http://www.aquaimmersion.com) and operates a website at such URL in connection with its business.
11. On or about April 1, 2009, Defendant Berry, acting alone and, on information and belief, with the assistance of or at the direction of agents or employees of Defendant Columbus Scuba, Inc., registered the URL internet domain name “[www.aquaimmersions.com](http://www.aquaimmersions.com)” using a website called “[www.godaddy.com](http://www.godaddy.com),” and made such registration private by using a service at a website located at “[www.DomainsByProxy.com](http://www.DomainsByProxy.com).”
12. Upon information and belief, in or about April of 2009, Berry, acting with the assistance of and/or at the direction of agents or employees of Columbus Scuba, Inc, caused the website URL internet domain “[www.aquaimmersions.com](http://www.aquaimmersions.com)” to be redirected to the URL internet domain “[www.columbuscuba.com](http://www.columbuscuba.com),” which is a URL internet domain registered to AlanStillman.com LLC at the same address as Defendant Columbus Scuba, Inc.
13. The registered “Administrative contact” for the URL internet domain “[www.columbuscuba.com](http://www.columbuscuba.com)” is listed as “Silverman, Andrew,” who is the sole member of Defendant Columbus Scuba, Inc.

14. Columbus Scuba, Inc owns and operates an internet website for its SCUBA training and retail store at the URL internet domain "www.columbuscuba.com." During relevant times herein, Columbus Scuba, Inc.'s website identified itself as Columbus Scuba's retail store and advertised related services such as scuba and dive instruction.
15. Defendant Columbus Scuba, Inc. is a competitor of Plaintiff Aqua Immersion, LLC in the Central Ohio dive and scuba market.
16. During relevant times herein, individuals intending to visit Plaintiff's website at the internet URL Domain "www.aquaimmersion.com" but instead, as a result of confusion or accidental typing, entered the URL internet domain "www.aquaimmersions.com," and were redirected to Columbus Scuba's website at the URL internet domain "www.columbuscuba.com."
17. The website for Columbus Scuba, Inc. utilized a "look and feel" similar to that of Aqua Immersion's website in a way that is likely to trade off of the goodwill of Aqua Immersion and/or likely to be confused with Aqua Immersion, LLC.
18. The actions by Berry and Columbus Scuba, Inc. were willful and intentional, done in the name of competition with the intent to damage the Plaintiff.
19. On July 7, 2009, Columbus Scuba, Inc., through its agent Andrew Silverman, received a letter from Plaintiff's counsel requesting, among other things, that Columbus Scuba, Inc. cease and desist from using the URL internet domain "www.aquaimmersions.com" and to assign the name to Plaintiff and to provide an accounting. Shortly thereafter, the URL internet domain "www.aquaimmersions.com" ceased being redirected, but to date Defendant Columbus Scuba, Inc. has not provided an accounting or assigned the URL to the Plaintiff.

**FIRST CLAIM**  
**(CYBERSQUATTING)**

20. Plaintiff incorporates by reference paragraphs 1 through 19 of this Complaint as if completely rewritten herein.
21. The Plaintiff's "Aqua Immersion" trademark is a famous and distinctive mark, has acquired secondary meaning, and is registered with United States Patent and Trademark Office as registration number 3739941.
22. The Plaintiff's "Aqua Immersion Dive 'n Travel Center" trademark is a famous and distinctive mark, has acquired secondary meaning, and is registered with United States Patent and Trademark Office as registration number 3816711.
23. The URL internet domain "www.aquaimmersions.com" and Plaintiff's mark "Aqua Immersion" and Plaintiff's internet domain URL "www.aquaimmersion.com" are confusingly similar and functionally equivalent.
24. Defendants had a bad faith intention to profit by willfully creating a confusingly similar internet domain URL, "aquaimmersions.com" and by further redirecting the domain name to the Defendant Columbus Scuba, Inc.'s own website at "www.columbuscuba.com."
25. Defendants had a bad faith, willful intent to divert customers intending to navigate to the Plaintiff's website to Defendant Columbus Scuba, Inc.'s own website at "www.columbuscuba.com" for commercial gain and to tarnish and disparage the Plaintiff's trademark and goodwill.
26. Berry offered to sell the URL internet domain name "www.aquaimmersions.com" to Plaintiff in August 2009.

27. Through the actions described herein, Defendants Columbus Scuba and Berry each registered, trafficked in, and/or used the internet domain URL, “aquaimmersions.com,” a confusingly similar and functionally identical mark to Plaintiff’s trademarks and URL.
28. Plaintiff’s marks are famous and distinctive.
29. Such acts were committed by Defendants with a bad-faith intent to profit from the Plaintiff’s marks and internet domain URL.
30. Such acts committed by Defendants were willful.

**SECOND CLAIM  
(TRADEMARK INFRINGEMENT)**

31. Plaintiff incorporates by reference paragraphs 1 through 30 of this Complaint as if completely rewritten herein.
32. Defendants willfully used a confusingly similar mark “aquaimmersions” in commerce without consent of Plaintiff with an intent to cause confusion and trade off of the goodwill of the Plaintiff.
33. The two domain names “aquaimmersions.com” and “aquaimmersion.com” are likely to confuse customers.
34. Defendants’ use of the internet domain URL “www.aquaimmersions.com” domain name caused actual confusion in the marketplace by re-directing individuals wishing to visit Plaintiff’s website to Defendant Columbus Scuba, Inc.’s website.

**THIRD CLAIM  
(OHIO DECEPTIVE PRACTICE ACT 41 O.R.C. 4165)**

35. Plaintiff incorporates by reference paragraphs 1 through 34 of this Complaint as if completely rewritten herein.

36. Defendants' use and domain name registration of "aquaimmersions.com" caused confusion and misunderstanding as to the source, sponsorship, approval or certification or goods or services, and is or was likely to cause such confusion and misunderstanding as to the source, sponsorship, approval or certification or goods or services.
37. Defendants' use and domain name registration of "aquaimmersions.com" caused confusion and misunderstanding as to affiliation, connection, or association with, or certification by, another, and is or was likely to cause such as to affiliation, connection, or association with, or certification by, another.

**WHEREFORE**, Plaintiff requests that the Court issue judgment as follows:

1. On counts one and two and pursuant to 15 USC §1125(d), an injunction permanently barring the Defendants from using the marks "aqua immersion," "aqua immersions," "aquaimmersions," "aquaimmersions.com" or any other mark that is confusingly similar or likely to cause confusion in the marketplace as to the source of the goods or services being provided, or as to the sponsorship, approval, or certification of the Plaintiff, or as to any affiliation, connection, or association with respect to the Plaintiff and the Defendants;
2. On all counts, an order requiring Defendant Berry to transfer and assign in whole any existing rights in the aquaimmersions.com domain name to Plaintiff;
3. On count one, actual damages trebled, or in the alternative, at Plaintiff's election prior to trial hereof, damages against Defendants in an amount up to \$100,000.00 pursuant to 15 USC §1117(d);
4. On counts one and two, attorney's fees and costs pursuant to the Lanham Act;



5. On count three, injunctive relief pursuant to ORC 4165.03(A)(1) against Berry barring her from using the marks “aqua immersion,” “aqua immersions,” “aquaimmersions,” “aquaimmersions.com” or any other mark that is confusingly similar or likely to cause confusion in the marketplace as to the source of the goods or services being provided, or as to the sponsorship, approval, or certification of the Plaintiff, or as to any affiliation, connection, or association with respect to the Plaintiff and the Defendants;
6. On count three, damages and attorney’s fees pursuant to ORC 4165.03(A)(2) and 4165.03(B).
7. The Costs of this action.

Respectfully submitted,



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